Editor's note: Reconsideration granted; decision vacated -- See Beulah Moses (On Reconsideration), 60 IBLA 252 (Dec. 4, 1981)

BEULAH MOSES

IBLA 75-389 Decided July 21, 1975

Appeal from decision of the Fairbanks, Alaska, District Office, partially rejecting application for Native allotment, F-17647.

Affirmed.

1. Alaska: Native Allotments

   An application for a Native allotment consisting of two separate parcels of land is properly rejected as to the one parcel on which there is no evidence of use or occupancy by the applicant and the applicant fails to supply such evidence on request.

2. Alaska: Native Allotments -- Rules of Practice: Evidence -- Rules of Practice: Hearings

   A request for an evidentiary hearing will be denied where there is no dispute involving a material fact and there is no chance of development of further material facts which would require a different decision.

APPEARANCES: William B. Schendel, Esq., Alaska Legal Services Corp., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Beulah Moses appeals from the February 4, 1975, decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), which rejected, in part, her application for an allotment pursuant to the Native Allotment Act, 34 Stat. 197, as amended, 43 U.S.C.

§§ 270-1 to 270-3 (1970), repealed by the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 et seq. (Supp. III, 1973). Section 18 of ANCSA, 43 U.S.C. § 1617 (Supp. III, 1973), did preserve applications for native allotments which were pending on December 18, 1971.

[1] Appellant's application was filed on November 22, 1971, for two parcels. Parcel A consists of 80 acres, the S-1/2 SE-1/4, Section 17, T. 20 N., R. 21 W., Fairbanks Meridian. Parcel B is also 80 acres, the NE-1/4 SE-1/4, section 18 and the NW-1/4 SW-1/4, Section 17, T. 17 N., R. 19 W., Fairbanks Meridian. Appellant and her husband accompanied a BLM field examiner to the respective sites in June 1973. It appears that substantial seasonal use as a fishing camp has been made of a small portion of parcel A. Therefore, in accord with Departmental policy, 43 CFR 2561.0-8(b), appellant was granted 40 acres of parcel A. 1/ However, when parcel B was inspected, no signs of human habitation were found, and appellant indicated that she was unfamiliar with the claim. On September 16, 1974, the BLM notified appellant that her application for parcel B would be rejected in its entirety as she had never occupied the claim as required by both statute and regulation. See generally 43 CFR Subpart 2561. She was allowed 60 days in which to submit any evidence that she had occupied the land. Appellant submitted no further evidence. On February 4, 1975, the Fairbanks District Office, BLM, rejected the application for parcel B. We find the action to be proper.

[2] Appellant requests a hearing to present evidence in support of her claim. However, her own statements to the field examiner indicated that she is unfamiliar with the land. When given an opportunity to submit evidence that she had occupied the claim, appellant submitted nothing. On appeal no facts are alleged which would mandate a different conclusion, no specific offer of proof has been made, nor has it been shown that the decision of the BLM is in error. Appellant is not entitled as a matter of right to a hearing pursuant to the Administrative Procedure Act, 5 U.S.C. § 551 et seq. (1970). The decision to hold hearings if there are disputed facts is within the discretion of the Secretary of the Interior. Pence v. Morton, Civ. No. A 74-138 (D. Alaska, filed April 8, 1975); Ann McNoise, 20 IBLA 169 (1975). Hearings will not be held where it is unlikely

1/ 43 CFR 2561.0-8(b) provides:

In areas where the rectangular survey pattern is appropriate, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

that further evidence will result in a different conclusion. See United States v. MacIver, 20 IBLA 352, 359 (1975); United States v. Taylor, 19 IBLA 9, 82 I.D. 68 (1975). Accordingly, the request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge